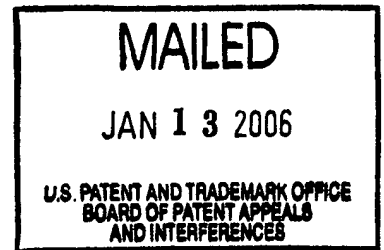UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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<u>Ex parte</u> JEFFREY P. BEZOS,
JOEL R. SPIEGAL and JON MCAULITTE

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Appeal No. 2005-2195
Application No. 09/377,322

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HEARD: DECEMBER 14, 2005

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│  U.S. PATENT AND TRADEMARK OFFICE │
│    BOARD OF PATENT APPEALS  │
│      AND INTERFERENCES      │
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Before KRASS, BARRETT, and DIXON, <u>Administrative Patent Judges</u>.

KRASS, <u>Administrative Patent Judge</u>.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 45-50, 53-55, and 63.

The invention pertains to e-commerce techniques. In particular, the invention provides various computer-implemented services for assisting users in identifying and evaluating items that have gained acceptance within particular user communities. The preferred embodiment provides the services on the Web site of an online store to assist users in identifying and evaluating

products, such as books. A service is provided for automatically

generating and displaying community-based popular items lists.

Representative independent claim 45 is reproduced as follows:

45. A computer implemented method of assisting users in
selecting items to purchase from an electronic catalog of items,
the method comprising:
maintaining purchase history data for each of a plurality of
users of the electronic catalog;
maintaining community data indicative of user memberships
within specific explicit-membership communities that users
explicitly join, wherein each of the explicit-membership
communities represents a respective subset of a general user
population;
monitoring online browsing of the electronic catalog by a
first user who is a member of an explicit-membership community to
detect that an item accessed by the first user has been purchased
by a second user who is also a member of the explicit-membership
community, as reflected by the purchase history data and the
community data; and
in response to detecting that the item has been purchased by
the second user, supplementing a catalog page requested by the
first user to include a notification that the item has been
purchased by the second user, said catalog page being a page on
which the item is displayed

The examiner relies on the following references:

Chislenko et al. (Chislenko)	6,041,311	Mar. 21, 2000
		(filed Jan. 28, 1997)
Bieganski	6,321,221	Nov. 20, 2001
		(filed Jul. 17, 1998)

No Author, "Just Add People - Collaborative filtering brings human
input to information retrieval in the enterprise" Information Week,
December 22, 1997, pg. 65 Retrieved from Dialog File:9, Acc#:
02024097 (InfoWeek).

Claims 45-50, 53-55, and 63 stand rejected under 35 U.S.C.

§ 103. As evidence of obviousness, the examiner offers Bieganski

and InfoWeek with regard to claims 45, 48, 50, 53, and 63, adding

Chislenko to this combination with regard to claims 46, 49, 54, and

55. With regard to claim 47, the examiner relies on the same

Bieganski, InfoWeek, and Chislenko references, but also relies on

Official notice.

Reference is made to the briefs and answer for the respective

positions of appellants and the examiner.

OPINION

In rejecting claims under 35 U.S.C. § 103, the examiner bears

the initial burden of presenting a prima facie case of obviousness.

See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed.

Cir. 1993). To reach a conclusion of obviousness under § 103, the

examiner must produce a factual basis supported by a teaching in a

prior art reference or shown to be common knowledge of

unquestionable demonstration. Our reviewing court requires this

evidence in order to establish a prima facie case. In re Piasecki,

745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984). The

examiner may satisfy his/her burden only by showing some objective

teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead the individual to combine the relevant teachings of the references. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

With regard to independent claim 45, it is the examiner's position that Bieganski teaches, generally, a computer-implemented method of assisting users in selecting items to purchase from an electronic catalog of items at column 5, lines 44-54, column 6, lines 38-47 and 66-67, column 7, lines 1-10, column 16, lines 38-49 and 62-67, and column 17, lines 1-12. The examiner points to column 6, line 66 through column 7, line 10, for a teaching of maintaining purchase history data for each of a plurality of users of the electronic catalog; to Figure 4, column 1, lines 46-62, column 6, lines 38-47 and 66-67, and column 7, lines 1-50, for a teaching of maintaining community data indicative of user memberships within a specific community, wherein the community represents a respective subset of a general user population; and to column 16, lines 62-67, and column 17, lines 1-25, for a teaching of monitoring online browsing of the electronic catalog by a first user to detect that an item accessed by the first user has been purchased by a second user who is also a member of the community as reflected by the purchase history data and the community data.

The examiner recognizes that Bieganski does not teach that the community is an explicit-membership community that users explicitly join, or that in response to detecting that the item has been purchased by the second user, supplementing a catalog page requested by the first user to include a notification that the item has been purchased by a second user, said catalog page being a page on which the item is displayed.

The examiner turned to InfoWeek for a teaching of a collaborative filtering wherein the community is an explicit community (pointing to paragraph 4 of page 2) and of a GroupLens version 2.5, allowing users to explicitly identify a community they want to be associated with by submitting a specific group of people, and generating a personalized home page for each user showing resources likely to interest them (page 2, paragraph 5), wherein the home page shows a list of "neighbors" with similar interests and permits users to see what their peers are viewing and how those peers rated the content.

The examiner then concluded that it would have been obvious to incorporate the teachings of InfoWeek into Bieganski "in order to allow a user to control what group the recommendation engine used to generate the personalized recommendation, as taught by InfoWeek"

(answer-page 6). Moreover, the examiner contends, it would have been obvious to incorporate the home page of InfoWeek into the method of Bieganski "in order to provide a user with a graphically enriched web page" (answer-page 6).

It is appellants' position that neither reference discloses or suggests "maintaining community data indicative of user memberships within specific explicit-membership communities that users explicitly join" (supplemental brief-page 3). Appellants argue that while the examiner relies on InfoWeek for this limitation, the cited portion of InfoWeek "involves the ability for a user to submit a specific group of people and obtain recommendations that are based on their collective preferences. Nothing in Information Week suggests that the users 'explicitly join' this group as set forth in the claim. Rather, the group is apparently specified solely by the user seeking recommendations, without the involvement or knowledge of the selected users" (supplemental brief-page 4).

Appellants further contend that the submission of a group of people, as in InfoWeek, does not appear to result in the formation of a "community" for which "community data indicative of user memberships" is maintained, but, rather, "the submitted group is apparently used to generate a personalized set of recommendations, and nothing more" (supplemental brief-page 4).

Moreover, contend appellants, the references fail to disclose
or suggest "'supplementing a catalog page requested by the first
user to include a notification that the item has been purchased by
the second user, said catalog page being a page on which the item
is displayed'" in the context of the other claim limitations
(supplemental brief-page 4). Specifically, appellants contend that
paragraph 5 of page 2 of InfoWeek, upon which the examiner relies
for a teaching of this claim limitation, describes a personalized
home page, and that this personalized home page is not "a catalog
page...on which the item [purchased by the second user] is
displayed." Moreover, contend appellants, there is nothing in
InfoWeek suggesting supplementing the page with a notification that
an item displayed thereon has been purchased by the second user.

Appellants also argue a "privacy" issue in that the applied
references do not address the privacy issue which would be raised
if users were to be notified of purchases made by others, and
contrasts this with the instant invention wherein explicit-
membership communities that users explicitly join are employed so
that users joining this community know to what extent a record of
their purchases will be available to others in that community and
explicitly give approval, within their control, by joining the
community.

We have carefully considered the arguments of appellants and the examiner, as well as the applied references, and we conclude that the examiner has failed to establish a <u>prima facie</u> case of obviousness with regard to the subject matter of claims 45 and 49.

We agree with appellants that the applied references fail to show the claimed "maintaining community data indicative of user memberships within specific explicit-membership communities that users explicitly join." While the examiner relies on InfoWeek (page 2-paragraph 4) for this limitation, this cited portion of the reference permits users to "submit a specific group of people and generate a list of recommendations based on their collective preferences." InfoWeek also provides for a "list of all the users who rated an item and how they rated it, or how one user rated an item." Thus, it appears to us that InfoWeek permits a first user to submit a list of a specific group of people from whom the first user would like recommendations, but it does not suggest that "users explicitly join" this group. It is the first user's choice as to whom is placed in this chosen group. Any "users" in that group have not explicitly joined the group on their own, as required by the instant claim language.

If the examiner interprets the first user who causes the list to be generated as the "user" who explicitly joins this "community" of users, we think that this is an unfair interpretation since the user in InfoWeek established the "community," whereas we interpret the claimed limitation, "explicitly join," to mean that the first user joins a pre-existing group, or "community" of users.

Moreover, we also agree with appellants that the claim limitation, "...supplementing a catalog page...to include a notification that the item has been purchased by the second user, said catalog page being a page on which the item is displayed" is not taught or suggested by either of the applied references.

The examiner contends that this is taught by InfoWeek, at paragraph 5 of page 2, since that portion describes a personalized home page for each user showing resources likely to interest the user. However, it is clear that a "personalized home page" of a user is not a "catalog page," as claimed. Moreover, while the personalized home page of InfoWeek may show a list of "neighbors" with similar interests, and a user may see what his/her peers are viewing and how they rated the content of certain Web pages, it does not appear reasonable to us to interpret this disclosure as the "supplementing" of a "catalog page" so as to include a "notification" that an item has been purchased by a second user.

It does not appear that there are any "purchased items" in InfoWeek, but, rather, merely Web pages, and the like, which have been viewed and commented upon by other users. Thus, as stated by appellants, at page 3 of the reply brief, "neither Bieganski nor Information Week includes any disclosure of notifying a first user of a purchase made by a second user."

While the examiner may be asserting the obviousness of modifying the applied references to include a notification of purchases made by second users, we are not convinced of a sufficient motivation that would have led the artisan to make such a modification. In fact, as appellants argue, artisans may very well have been dissuaded from making such a modification because of the "privacy" issues involved, viz., the publication of a user's purchases without the approval of that user.

Accordingly, we will not sustain the rejection of claims 45 and 49 under 35 U.S.C. § 103.

Further, since the Chislenko reference and the examiner's reference to Official notice, with regard to claims 46, 49, 54, and 55; and 47, respectively, do not appear to provide for the deficiencies noted supra with regard to Bieganski and InfoWeek, we also will not sustain the rejections of claims 46, 47, 49 under 35 U.S.C. § 103.

Turning to the rejection of independent claim 53, this claim has limitations similar to those of independent claim 45, viz., detecting "that an item accessed by the first user has been purchased by a second user," and "supplementing a catalog page...to include notification that the item has been purchased by the second user." Thus, for the reasons <u>supra</u>, we will not sustain the rejection of claim 53 under 35 U.S.C. § 103, or of claim 54 which falls with claim 53.

We also will not sustain the rejections of claims 50, 48, and 63 under 35 U.S.C. § 103 since these dependent claims all include the limitations of their independent claims 45 and 53.
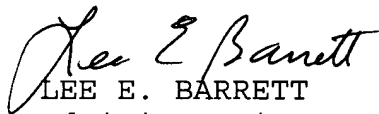
Since we have not sustained the rejection of claims 45-50, 53-55, and 63 under 35 U.S.C. § 103, the examiner's decision is reversed.

REVERSED

ERROL A. KRASS   )
Administrative Patent Judge   )
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)
)
)
) BOARD OF PATENT
LEE E. BARRETT   )   APPEALS
Administrative Patent Judge   )   AND
)   INTERFERENCES
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)
JOSEPH L. DIXON   )
Administrative Patent Judge   )

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Appeal No. 2005-2195
Application No. 09/377,322

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